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THE UNITED NATIONS AND THE MAGNA CARTA FOR CHILDREN

By
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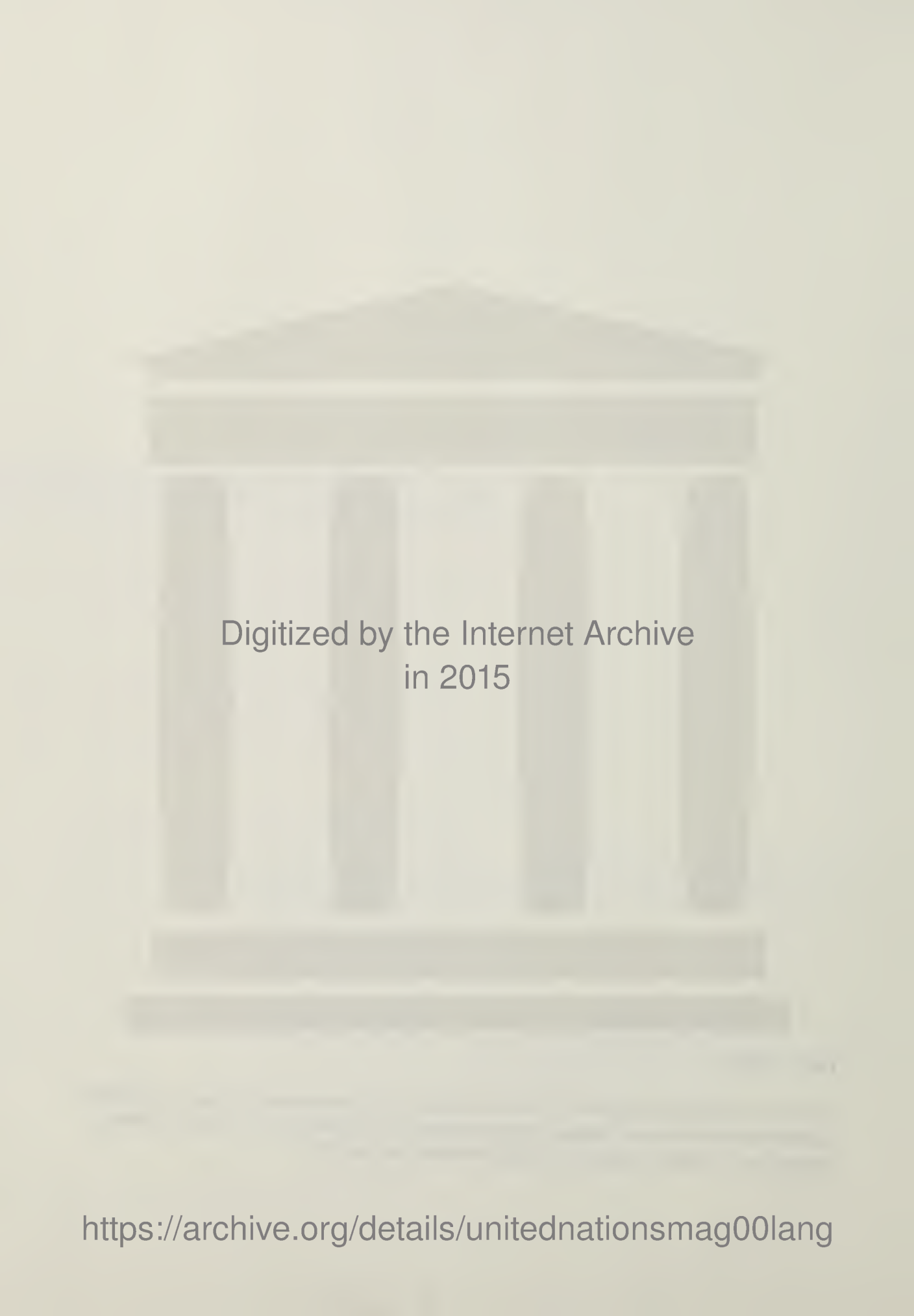
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PREFACE

The impulse that invited the preparation of this book is one which is linked to the convergence of a number of factors bearing on my interest in human rights. First, the brutality visited on children during World War II has had an abiding negative effect on my sense of what is possible in human conduct. Second, I am persuaded that children are not simply the means by which human societies are continued, but, as well, the potential source of moral revitalization and transformation for those societies. Third, I recognize that the human rights movement, which followed World War II, holds in it a profound promise that of humanity consciously co-existing as a "single people," indeed, as a single family within which children, who are most deserving of our reverence and tenderness, will not be desecrated by hatred. Fourth, my coming to understand that the emergence of the rights of children, as a major part of the human rights movement, carries with it a twin danger--that the rights of children might be interpreted as reduction of the power, authority, and rights of parents; and, as a reaction to that flawed interpretation, a parents-led backlash against children's rights might develop. Fifth, the conviction I gradually gained as I reviewed the history of efforts to offer children "protection" and "rights" within the existing international system, that, despite all that has been said and written about children's rights, not much has been done to help people really understand the singular nature of the development that took place in 1989, when the UN adopted the Convention on the Rights of the Child.

The Principal aim of this work is to help judges, social workers, lawyers, physicians, police, parents, political leaders, children (especially those entering adolescence), teachers, guidance counselors, professors, journalists, and, certainly, the wider, lettered public understand the significance of this Magna Carta for Children. A secondary aim is to provide readers with a documentary source through which they can grapple with some of the conflicts, cultural blind-spots, moral ambiguities, and self-interests that accompanied and has followed, the adoption of the Convention on the Rights of the Child. I hope the volume has achieved its aims.

Finally, I want to thank the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund, Defense for Children International, the International Labour Organization, the International Legal Studies Library at Harvard University, the Boston University Law School Library, and the Healey Library at the University of Massachusetts at Boston for the help they gave me during the preparation of the work.

INTRODUCTION

"So long as a parent adequately cares for his or her children . . . there will normally be no reason for the state to inject itself into the private realm of the family to further question the ability of parents to make the best decisions concerning the rearing of that parent's children." Such is the claim of Justice Sandra Day O'Connor, an Associate Justice of the United States Supreme Court, in her plurality opinion in that court's June 5, 2000, decision concerning *Troxel* v. *Granville.*[1]

That decision, which effectively reversed a law that permitted a judge to order visiting rights for grandparents over a mother's objection, significantly bears on the rights of children as covered by this volume. First, although rendered by a national (United States) court, the decision is likely to be cited elsewhere in the world, because of the cultural influence of the United States. And second, the decision itself expresses a strongly held transnational belief that "parents know best." In substantive terms, the court's decision bears on three historically important, though increasingly discredited, views: that which this volume calls the care-taking ideology, the view of children as a form of property, and that of the claim that nation-states should have only a limited role in family governance.

The care-taking ideology focuses on caring for the supposed *needs* of children (supposed because adults, especially parents, "know and will do best"). This view does not emphasize, though it gives lip-service to, the *rights* of children—certainly not rights that are co-equal with those of adults. Instead, this view focuses on *needs,* which allows

[1] See a summary of the decision in the *New York Times* (June 6, 2000), pp. 1 & 15. See, also, in the same issue and pages of that newspaper, Linda Greenhouse's article entitled "Justices Deny Grandparents Visiting Rights."

adults, including parents, to substitute their own interests (disguised in the language as their judgment) for those of children. The ideology does more: it permits adults to exercise authoritarian power over children. Hence the United States Supreme Court, in the above-mentioned decision, did not only reject a local court law that permitted "any person" visitation rights, if a court decided that such visitation would "serve the best interest of the child," but, as well, it declared that parents have a "fundamental right to make decisions concerning the care, custody and control" of their children.[2] Little was said about the rights of children.

Largely hinged to the United States constitutional norm of privacy (which says that the "right of the people to be secure in their persons, houses, papers and effects, shall not be violated"[3]), the decision is also linked to two other ideas—that of children as property and that of family governance. In the former, like any chattel, the "owner" (the parent) can, by and large, exercise care, custody, and control as he or she wishes or sees fit. And, in the case of family governance, this, too, was part of the private domain within which adults (men only, until recently) enjoyed sovereignty. The state should not intervene. Hence the Court's position about limitation on the state—there are spheres or domains to which it may not generally have access. And those spheres include the "private realm of the family" into which it may not "inject itself." So, for centuries, under the rights of husbands, fathers, uncles, and even brothers, women were used, abused, and even killed in the "private realm of the family," with the state largely impotent to do anything. Now children, under the "fundamental rights of parents," are to continue being subject to like treatment.

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[2] *Ibid.*

[3] See article IV of the US Constitution. See, also, an admirable article from Professor Jeffrey Rosen of the George Washington University Law School, "My Child, Mine to Protect" in *The New York Times* (June 7, 2000), p. A.31

The 1989 United Nations Convention on the Rights of the Child, legally and morally, seeks an end to the kind of reasoning described above. That convention produced a declaration, which is here called the Magna Carta for Children. It stated that children are neither property, nor inferior extensions of adults, but full members of the human family who must be respected and treated in a manner consistent with that membership. Status such as adulthood, boyhood, parenthood, nationality, and religion is therefore without significance. The human, who happens to be young, ill, disabled, old, or otherwise vulnerable, is no more or less entitled to his or her dignity and respect than any other human being. Indeed, children, because of their general vulnerability (and all of us, especially those who are ill and under the care of others, are in some respects vulnerable), are "where humanity begins."[4] A people's conduct toward its most vulnerable defines its humanity. But who are children? In what way does this Magna Carta fundamentally alter their traditional status? And by what process was this attempted alteration effected? These are some of the major thrusts of this volume. We will now sketch a profile of children, so that the reader can better grapple with the overall importance of the 1989 convention.

Children are human beings, age eighteen or younger, who constitute two billion persons, one-third of humanity. A sub-group of them (adolescents, age ten to eighteen) makes up one-sixth of the world's population and is a major force for change. Children are also the group of humans, 12 million of whom, under the age of five, die needlessly each year from preventable disease; 130 million children do not have primary schooling; and 250 million children "are being robbed of their childhood, because they are trapped in

[4] Taken from a statement made by Suzanne Vega, a worker for Amnesty International, in *Amnesty International, Childhood Stolen* (London, AI, British Section, 1995).

child labour."[5] Likewise, they are the young who are unable to comprehend the meaning of death, who often are more afraid of wetting their beds than of the consequences of being charged with criminal conduct, but who are tried as adults, instead of being afforded opportunities for treatment for their immature emotional and moral development.[6]

Children are victims of forced prostitution, parental (in general, adult) abuse, and deliberate, deathly discrimination. (For example, the "missing" girls in China and India reflects a cultural bias that prefers boy babies. The international community, especially the United Kingdom and the United States, offers protection to Kurds against Sadham Hussein's human rights violations, while allowing a third of Iraqi children to be malnourished. Some 4,500 to 5,000 die monthly as a result of economic sanctions.) Children are also victims of poverty (even in the United States, over a fifth of children grow up in poverty), of inherited, human-endangering cultural deformities, and of public policies that consistently impair their moral promise and their potential social contributions.

The cultural deformities referred to above include the racial, ethnic, religious, national, and social hatreds and spirits of revenge that adults, in their felt need to *re-produce* themselves (individually and collectively) transmit to their children. A child, therefore, by virtue of his or her "identity at birth," may be ineligible for schooling, for respect, for life as a human being, and even for life itself. The hurt to such children's mental growth, the injury to their psychological and spiritual development, and the

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[5] Much of the statistical information is taken from *The Progress of Nations, 1999* (UNICEF, 1999)
[6]Gitta Sereny, *Cries Unheard: Why Children Kill* (New York: Metropolitan Books, 2000); Sissela Bok, "Colorado Killings, Media Violence Begets Violence, The Erosion of Empathy" in the *Boston Globe,* (April 23, 1999), p. A 27; and Keith Bradsher, "Fear of Crime Trops the Fear of Lost Youth" in the *New York Times,* (November 11, 1999), p. WK. 3.

damage to their nervous systems as well as to their faith in life are beyond our present capacity to assess accurately.

Even when children are allowed to enjoy an early life of happiness—one sponsored by hope, idealism, and a sense of pride and confidence—that happiness is often but a prelude to victimhood, as Dorothy Macardle so painfully reminds us:

"These were Hitler's first victims—the children of Germany. Fired by a white heat of devotion (hope and pride), they were then hammered and twisted, like iron on the anvil, into weapons for his ends."[7] We have not had a like course of conduct in human history, but we have been emulating the spirit of Hitler in other ways—in the preparation and use of child soldiers, in shaping attitudes that "manufacture" soldiers (killers) out of young men and women, and in the hatred we generally see from Cambodia and Rwanda to the former Yugoslavia and the Middle East. And our public policies with regard to education, violence, and "economic adjustments" amount to little short of social abandonment. Children are the primary victims, for instance, when the International Monetary Fund pursues "structural adjustment" policies that require governments to cut back on social programs whose preservation is vital to the well-being and development of children. Children are the victims when a country's educational policies or cultural practices emphasize skills but not the molding of character, or when a child's sense of self, of personal or social competence, or of worth, is hinged to his or her connection to brand names, or when classrooms become forums for commercial advertisements. Children are victims of financial allocations to "national security" systems (and there can be no security when children are victims), the material support of which often comes at the expense of unschooled or poorly schooled children. Few expressions of social

[7] Dorothy Macardle, *Children of Europe* (Boston: Beacon Press, 1951), p.14.

abandonment and victimization however, are as egregious, morally coarsening, and socially far-reaching as the violence to which we daily expose children.

From violence "taught, promoted, and glamorized"[8] by the mass media to that practiced and honored by adults between countries,[9] children's sensitivities are assaulted —so much so that their latent potential for psychological and moral growth may be stunted and subverted. And with that subversion, a child's capacity for moral and social empathy is reduced. In consequence, children may suffer from lack of respect (for self and other, as will be discussed with regard to the consequences of World War II later in this volume), an inversion of the controlling influence of the ideal over the real, and may experience difficulty accepting the "authority of the good," in face of a deadening of human feelings and the seductive appeals of power expressed in violence. Additionally, as the appeal of power as violence gains influence, children tend to become more violent, and they are victimized in two other ways: they are blamed for the violence, and they are socialized through a system of "safety drills."

"Safety drills" come in the form of awareness campaigns that focus on the potential danger of drugs; for example, AIDS, bombs, guns, automobiles, and strangers, including other children. But in addition to warning children, adults are, without recognizing it, also teaching children of five and six years of age that they must be afraid —that the world is threatening and unsafe.

The Magna Carta for Children, which has been ratified by all but two countries throughout the globe, seeks to liberate children from the kind of thinking (represented by the United States Supreme Court) that regards the home (the private sphere) as a kind of

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[8] Bok, *op. cit.*

[9] Former President Clinton, while authorizing the bombing of Yugoslavia, in 1999, was telling high school students to observe non-violence in their relationship with each other. But he, and other political leaders, cannot be effective teachers of non-violence to children, when they resort to violence against another political leader or another country.

social castle to which the state has but limited access. As well, it seeks to free them from the victimizing exposure to and inculcation of violence that results from social drills, which invite suspicion and fear of others. With its above-mentioned liberation and its making children full members of the human family, the Convention on the Rights of the Child seeks to revolutionize the place of children in society (national and international) and, by extension, in every phase of society itself.

The principal objectives of this work are to provide readers ready access to the text of the Carta and to show how international society went about bringing that Carta into being. The work is divided into four parts, each of which covers a defined historical period during which steps were taken on the road to recognizing children as full human beings. Part I covers 1924 to 1948, during which the international community made early attempts to offer limited protection to children. The community, however, did little to go beyond nineteenth century views of the child. Part II, which encompasses 1949 to 1966, looks at the moral and legal struggle to deal with the emerging human rights regime within which children should be recognized as "subjects," that is, full members of the human family but were, nevertheless, offered only a status of *candidates* for that membership. Part III, which deals with developments from 1967 to 1989, focuses on children's entry into full membership; and Part IV, which covers some discussions continuing from 1990, looks at two additions to the 1989 convention.

Each of the four parts of the volume offers the reader a glimpse of the historical context within which each major step was taken on the journey to adoption of the Children's Magna Carta. Following each discussion, the text of the relevant international human rights instrument is presented.

The rights of children are intimately linked to the purposes and aims of the UN. That body, with all the strengths and weaknesses of its members, was pursuing some of

its laudable aims, in its effort to shape and elaborate the rights of children. This volume contends that the rights of children, were they to be taken seriously, require fundamental changes in national and international society. The promise of those changes alone is likely to invite future adverse reaction toward children, if for no other reason than the fact that granting rights to children is likely to reduce the power of adults. But if we reflect on their relative innocence, meditate on their potential for human wholeness, and see in them a sunlight amid the shades of our age, that reaction will not last. And the promise of youth may yet become the fruit of maturity.

PART I: THE BEGINNINGS

1924-1948

The founding of the United Nations has been rightly viewed throughout the world as an event that has held promise for human well-being. In its preamble, the constitution of that world organization (called the Charter of the United Nations), not only recites some of the reasons for its creation, but, as well, offers some of the promises, which people have come to associate with the UN.

Those promises include saving future generations from the scourge of war, which had, within a period of approximately thirty years preceding the founding of the UN (1914-1945), brought more suffering to the human family than any other comparable period of time in human history. The promises also include the specific pledge to *establish conditions* under which justice can be maintained, to "promote social progress in larger freedom," and to nurture faith in fundamental human rights and in the dignity and worth of the human person.

As part of the effort to establish the conditions under which peace, justice, and the "dignity and worth" of the human person could be realized, the UN moved in three general directions. First, one of its principal organs, the Economic and Social Council (ECOSOC), was assigned the task of up-rooting those social, economic, and cultural factors deemed to be the primary sources of wars. In other words, the thinking of those who founded the UN was that fundamental improvements in the social, economic and cultural privations that human beings experience would radically alter those impulses that invite the anti-social behavior we call war. Second, it authorized the ECOSOC, through

the latter's Commission on Human Rights, to elaborate human rights standards that would at once express and provide the legal and moral framework to protect fundamental human rights as well as help create the conditions under which justice and social progress would be realized. Third, the UN, through its General Assembly, created a number of specialized agencies which are to work with the ECOSOC in carrying out the latter's functions, while pursuing their own respective responsibilities. Among the agencies created are the United Nations Children's Fund (UNICEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).[1]

In the case of UNESCO, which was created in 1945, its specific purpose is that of "promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, language, or religion by the Charter of the United Nations."[2] UNICEF, which was created in 1946, was initially intended to be a temporary institution that would provide emergency supplies of food, clothing, housing, and medicine to children, who had been rendered destitute by the ravages and inhumanity of World War II, especially in Europe.[3]

Despite its claimed commitment to *human* (not adult human) rights, as indicated above in the UN charter, the provisions of the constitution of UNESCO, and even the creation of UNICEF to deal with emergency concerns of children after WWII, the post-

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[1] The International Labor Organization, which was created in 1919, has also had a significant record of working with the ECOSOC and many other UN organs to ensure social progress, in general, and the rights of children, in particular.

[2] See Article 1 of UNESCO's constitution.

[3] Initially known as the United Nations Children's Emergency Fund (UNICEF), the name was changed by the UN in 1953 to the United Nations Chilren's Fund. The new name is intended to reflect the fact that the UNICEF is now a permanent organ of the UN and that its responsibilities go beyond emergencies. The acronym, UNICEF, is nevertheless retained because of its global popularity.

1945 world order continued a long tradition of disregarding the moral and legal claims of children. For instance, children were to be part of UNESCO's work, in that organization's use of education, science and culture to create a new type of human being—one capable of moral solidarity, but they were not recognized as having rights. Indeed, in the matter of children's rights, the UN, initially, simply emulated its predecessor, the League of Nations. The latter organization, as it sought to deal with the brutal killing, rape, and abandonment of children during World War I, had done did little more than give expression to the concerns of certain reform movements that had developed during the nineteenth century. But what was that tradition of disregard for the moral claims of children, and what were the sought reforms to which the League of Nations responded?

After centuries of ill treatment of children by adults—a history often associated with low levels of child care and circumstances within which children were "beaten, terrorized, and sexually abused"[4]—the rise of movements for political democracy during the nineteenth century brought with them greater concern and respect for individuals. Linked to the concern and respect for the individual were reforms in social life, some success in making public school education for children compulsory, and some victories in removing children from adult prisons, in creating special schools for the handicapped, and even in founding orphanages. Additionally, toward the end of the century, a number of western countries began to create a separate juvenile justice system and, equally important, to establish safeguards against child labor.[5] Those reforms, though limited in their reach, began to make an impact on society. More important, they began to modify people's expectations of each other. It is within the context of the rise of democratic

[4] Lloyd de Mause (ed.), *The History of Childhood* (New York: The Psychohistory Press, 1974).
[5] de Mause, "Revolution of Childhood" in de Mause, *The History of Childhood,* ibid., p. 54.

movements and their associated social reforms that one should look at what the early United Nations and its predecessor, the League of Nations, did in relation to children.[6]

As before mentioned, the UN created UNICEF in 1946 in order to deal with what was then seen as a temporary emergency. Once it had tended to that "temporary problem," it could concentrate on matters of greater weight. Children, it was then thought—under what will later be identified as the care-taking ideology—should be cared for and protected. Parents, consistent with that nineteenth century thinking, were the primary caretakers; if they failed or, for whatever reason, were unable to discharge their duty as caretakers, the state (or states in cooperation with the UN) should seek to do what parents would ideally have done. Hence, in the text of the 1948 Universal Declaration of Human Rights (UDHR), one finds the care-taking ideology clearly expressed: children are entitled to "special care and assistance." And, whether born in or out of wedlock, they should have "the same protection." Further, parents "have a prior right to choose the kind of education that shall be given to children."

The "protection" as well as "special care and assistance" provided for would prevent children from being subjected to some of the material and other privations to which they had formerly been exposed. Those provisions, however, represented but a continuation of the national reforms popularly urged during the latter part of the nineteenth century and, through the efforts of non-governmental organization such as the International Association for the Protection of Children, admirably advanced at the

[6] The term "democratic movements" is deliberately employed here, because many groups, though espousing significantly different approaches to their sought change in societies--and one has but to review the positions of Social Democrats, Christian Democrats, Labor parties, Nationalist parties and Liberal parties to confirm this--all claimed to be champions of democracy.

international level during the beginning of the twentieth century. Those efforts, plus the special circumstances caused by the war, culminated in the 1924 Declaration of Geneva.[7]

That declaration, also called the Child Welfare Charter,[8] was adopted by the League of Nations, partly in response to a new and more refined recognition of children's vulnerability—a vulnerability that had been so clearly demonstrated during World War I. Acknowledging that "mankind owes the child the best that it can give," states declared and accepted as their duty (through the declaration) that "above all considerations of race, nationality or creed," children must be given the means, including resources, necessary for their normal development. So nations assumed the obligation to ensure that children would be fed, given shelter, reclaimed from delinquency, and, among other things, "protected against every form of exploitation."

The use of the word "duty" in the Declaration should not be read uncritically. The word does not suggest that the state acknowledges what its responsibility *is* or *ought* to be legally or morally to others—in this case to children—by virtue of that other's *right*. In other words, "duty" as used in the declaration does not bear with it its implied, complementary opposite, "right." The Child Welfare Charter is looking at duty with an emphasis on the would-be author or agent of the conduct to be associated with "duty." And as in almost all cases of such emphasis, the central focus is on the author's "duty," on account of her (his or its) *position* or *status*. Duty understood in this context is really the equivalent of a discretionary kindness, a form of grace or favor. In relationship to the focus of this work, the would-be author or agent is the nation-state, the sovereign

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[7] See Vivian C. Fox, "Poor Children in Early Modern England", *The Journal of Psychohistory*, Vol. XVIII #3 (Winter, 1996), pp. 287-306. Here the author looks at provisions made by the government of England for the protection of children at a much earlier period. But, as will be seen later, the term "rights" has a different meaning under the human rights regime.

[8] See Declaration of Geneva, League of Nations Publication, Vol. IV-VI, (1924)

authority in the international system. And they would, by virtue of their unique status, extend protection to children.[9]

Another point worth bearing in mind as we discuss the international position of children is that when duties arise from any would-be author's position or status, the person or thing toward whom (or which) the "duty is owed," is, with few if any known exceptions, but an object. That is, such persons or things are simply those to whom (or to which) action is taken or directed. Likewise, they—in this case children—are not and cannot be authors of their action. They owe no duty and are not possessors of rights. As such, they cannot make legal claims, internationally, in their own names. So they cannot have standing to sue and enforce whatever claims a presumed right confers.

Of course, children did not possess rights because individuals in general could not be said to have rights until after 1948 (with the adoption of the UDHR). But there were two other reasons why—reasons that continued to exert a strong hold on the public's consciousness, even after individual, adult human beings were recognized as having rights following the end of World War II. Those reasons are first, the lingering view that children are a form of property to be owned and treated as their parents willed. And second, the earlier mentioned ideology of care-taking, which officially "replaced" the view of property ownership.[10] That ideology, while rejecting the view of children as property and affirming the notion that every child has his or her own unique personality and destiny, claimed that children suffer from certain "disabilities" which prevented them from recognizing, pursuing, and ensuring their own well-being. Parents, therefore, had the

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[9] See Winston Langley, "Children As Subjects of International Law: The Conquest of the Ideology of Care-Taking" in *Review of International Affairs*, Vol. 50 (January, 1999), pp. 40-48. Much of the above discussion can be found in this article.

[10] John Holt, *Escape from Childhood: The Needs and Rights of Children* (New York: E. P. Dutton & Company, 1974); Richard Farson, *Birthrights* (New York: Macmillan, 1974)

duty of taking care of children's interests—interests that were most often seen as a "natural extension" of the parents' interests. In short, the increased appreciation of children's vulnerability on the part of the international community after World War I did not achieve very much in the direction of children's rights.

Earlier we said that the momentum from a late nineteenth century national political and social reform movement and a World War I-induced appreciation of children's vulnerability combined to prompt the League of Nations to adopt the Child Welfare Charter. There was another factor, and that factor explains in part why "duty" as used in that charter's text did not imply that any rights were to be accorded those who were to be the beneficiaries.

World War I had disrupted the then prevailing political authority as well as the moral justification for the existing socio-economic arrangements. And in that disruption, it had brought material and moral destruction never before experienced. In the face of doubts and cynicism, which that brutal destruction invited, political elites engaged in a general effort to regain some degree of political legitimacy by promising social and economic changes. The Child Welfare Charter was part of those changes and reforms; hence its focus on feeding the hungry, sheltering the homeless, and protecting the exploited.

World War II, which was even more brutal than World War I, produced untold suffering for children. As late as 1947, for example—a year before the proclamation of the UDHR—hundreds of thousands of war-produced orphans were in Europe. In Czechoslovakia and Holland alone there were over 100,000; and in Yugoslavia, there

were an estimated 280,000. And the conditions of some, in Romania, for instance, were unspeakable.[11]

The shared view, after World War II, that children needed protection dominated all other concerns for them. It was not surprising, therefore, that the UN, whose members were so persuaded by the ideology of care-taking, would adopt the terms of the Declaration of Geneva "as binding on the peoples of the world as they had been in 1924."[12] Neither is it surprising that UDHR, for all its revolutionary force and meaning, in its intended effects on children, merely extended the care-taking ideology.

Intended effects are not always the only consequences human actions have, however, especially when those actions involve the creation of general standards and suggest departures from previously accepted norms or principles. Often, those consequences—particularly when those principles are ethical ones—broaden in forms that were not originally anticipated, as new meanings are deduced or are otherwise derived from general standards. Such has been the case of human rights principles as they apply to children.

The text of the Child Welfare Charter of 1924 and relevant portions of the Universal Declaration of Human Rights follow.

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[11] Dorothy McCardle, *Children of Europe* (Boston: Beacon Press, 1951), pp.59, 60, 91-92, 107, 154, 200, 231. See, also, Mark Mazower, *Dark Continent: Europe's Twentieth Century* (New York: Alfred A. Knopf, 1999), pp.221-222.

[12] See United Nations, *United Nations Actions in the Field of Human Rights* (New York: United Nations, 1983), p. 206.

DECLARATION OF GENEVA, COUNCIL OF THE LEAGUE OF NATIONS ASSEMBLY, Geneva, March 1924

The Assembly endorses the declaration of the rights of the child, commonly known as the Declaration of Geneva, and invites the States Members of the League to be guided by its principles in the work of child welfare.

DECLARATION OF GENEVA

By the present Declaration of the Rights of the Child, commonly known as the Declaration of Geneva, men and women of all nations, recognising that mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

I. The child must be given the means requisite for its normal development, both materially and spiritually;

II. The child that is hungry must be fed; the child that is sick must be helped; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;

III. The child must be the first to receive relief in times of distress;

IV. The child must be put in a position to earn a livelihood and must be protected against every form of exploitation;

V. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly
Resolution 217 A (III), December 10, 1948

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least at the elementary and fundamental stages...

3. Parents have a prior right to choose the kind of education that shall be given to their children.

PART II: CHILDREN AS CANDIDATES FOR SUBJECTHOOD

1949-1966

During the period from 1949 to 1966 members of the international and world communities—states, intergovernmental institutions, non-governmental organizations, and individuals—developed a greater sense of the devastation that World War II had wreaked on children in general, but especially those of Europe.[1] No longer could the horrors of that event be hidden, deliberately or inadvertently, behind the egregious mask of language such as "unaccompanied," "displaced," "war handicapped," "unfound," "unclaimed," or "unidentified" children. There was now widely shared knowledge of the murder, starvation, rape, prostitution, enslavement, and deep humiliation of children, especially those who were or were thought to be Jewish. Known, too, were the reckless, heartbreaking journeys made by some children, in search of mothers and fathers, brothers and sisters whom they thought they might find alive somewhere. A "remote wisdom" was observed in children throughout Europe who had "survived" the War—children who often had faces of old men and women hinged to skeletal lower bodies with hands and feet disproportionately long. Known, also, was how many of those surviving children had witnessed adults, including their parents, who had to lied and cheated, other children who had been killed, teachers who had beenn abused because they sought to protect their students, and fellow students who, without any apparent reason, had disappeared. The

[1] Dorothy McCardle, *Children of Europe* (Boston: Beacon Press, 1951); James H. Yamaguchi, *Children of the Atomic Bomb: An American Physician's Memoir of Nagasaki, Hiroshima, and the Marshall Islands* (Durham: Duke University Press, 1965); and Robert Lifton, *Death in Life: Survivors of Hiroshima* (New York: Simon and Schuster, 1967).

physical, psychological, social and moral consequences of those experiences were also known.

Among those consequences was a sense, on the part of those surviving children, that the world they knew had been shattered and was without a secure replacement. Large numbers of children were physically deformed, physiologically dysfunctional (sterilized, for instance), or emotionally unresponsive.

With regard to the psychological impact of war, children often reported the suspension of ideals, uncertainty about any permanence to things, and they frequently felt a deep loneliness. Further, a limited capacity for trust, a generally felt alienation, and, for those who survived to reached puberty, a burden about the "shortcomings and the senselessness of existence" defined their lives.[2] The process of socialization that many of the children had experienced during the war (cruelty, arbitrariness, falsehoods, concealment, and the general lawless conduct that people in admired positions of authority had engaged) began to structure and characterize their own behavior—one defined by lying, trickery, theft (even from corpses in the street) and sabotage. From Holland, Denmark, and Poland to Greece, Hungary and Turkey, one found unprecedented "juvenile delinquency" among children who had lived through or encountered the scorn that was visited on the values of respect, tolerance, truthfulness, charity, justice, and good will. For those children who had not been physically or socially abused by the war in the manner described above, who were too young to discriminate and, therefore, to be morally and spiritually abused, their resulting behavior included a general contempt for authority and all values which were not in some way linked to force. And for many of

[2] MaCardle, *op. cit.*, p.260. This latter condition, in the author's view, should be generalized more than MaCardle has made it.

those who became, directly or indirectly, a part of active resistance to aggression, the contempt was often more extreme.[3]

It was in the atmosphere defined by the above-described conditions of children (and one must here remember the Korean war, the first Arab-Israeli war, and the first Indo-Pakistani war and their impact on children) that the international community planned and developed its next moves on the human rights of children. Those moves were essentially three in number: the adoption of the Declaration on the Rights of the Child (DRC) in 1959, the proclamation of the Declaration on the Promotion Among Youth of the Ideals of Peace and Mutual Respect and Understanding Between Peoples (DYMPRU) in 1965, and the adoption, in 1966, of two international covenants—the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Despite these otherwise commendable courses of international conduct, the status of subject (which every human being should enjoy, according to the concept of human rights) was denied to children. And as in the case of the Universal Declaration of Human Rights, children were allowed to remain occupants of the status of objects. But let us now review each of the three international steps mentioned above and then make some general assessments of their meaning.

As early as 1950, a Temporary Social Commission of the UN's Economic and Social Council (ECOSOC), influenced largely by the conditions children had experienced in the preceding decade and the inadequacy of existing legal protections accorded them, had adopted a draft Declaration on the Rights of the Child and had transmitted it to the ECOSOC. The latter body turned the draft over to its Commission on Human Rights for

[3] *Ibid.*

review and advice. That review and advice came in the form of a revised draft, which was submitted to the ECOSOC. In turn, the ECOSOC sent the revised draft to the UN General Assembly, which, by resolution 1386 on November 20, 1959, adopted and proclaimed it.

Repeating the admirable statement contained in the 1924 Child Welfare Charter that "mankind owes the child the best that it can give," the 1959 DRC contains, in a text of ten principles, a code for the "well-being of every child." The pursuit of that well-being should be, it proclaims, without "any exception whatever" and "without distinction or discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status, whether of himself (herself) or of his (her) family."[4] It speaks of the "special *protection*" (emphasis is the writer's) children should enjoy, such as the benefits of social security, healthcare, adequate nutrition, housing, and recreation. Likewise, it provides that children are entitled to a name, a nationality, and to education. Reflecting a consciousness of the horrors of World War II (and this awareness is also exhibited in Principle 1, which prohibits discrimination on the basis of one's status or that of one's family), Principle 10 provides that the child "shall be protected from practices which may foster racial, religious and other forms of discrimination." And, in one of its more remarkable achievements, the DRC provides that in the enactment of laws and other policies to give protection to children, "the best interest of the child shall be" the guiding consideration.[5]

As regards the second step taken in the period under discussion, the adoption of the DYMPRU represents an important advancement on the Child Welfare Charter, the Universal Declaration of Human Rights, and the Declaration on the Rights of the Child.

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[4] See Principle 1 of the DRC.
[5] See Principle 7 of the DRC.

Unlike its three predecessors, which view children primarily as objects to be protected and cared for, the DYMPRU views them as potential partners—and therefore as subjects —in the pursuit of the purposes of the United Nations, including those assigned to UNESCO, which we briefly discussed in Part I. So, DYMPRU speaks not only of having children help in the process of saving succeeding generations from the scourge of war (a central aim of the UN) but, as well, in achieving the ideals of justice, freedom, and economic and social progress for all. Likewise, it sees that partnership extending to the promotion of disarmament, international moral solidarity, as well as international peace and security. And it asserts that children must develop respect for the heritage of *all* humankind and a consciousness "of their responsibilities to the world they will be called on to manage."[6] Objects, of course, do not have *responsibilities*, nor are they called on to *manage*. So, the DYMPRU had significantly moved away from viewing children primarily as objects. But this important international human rights instrument goes further.

The DMYPRU claims that children are "destined to guide the futures of [hu] mankind"[7] (not simply manage but *guide*), and guides are those who take initiative, who have the standing to act, even to formulate and direct what other subjects should and must do. So the DMYPRU calls for national and international associations of young people who "should be encouraged to promote the purposes of the United Nations, particularly international peace and security."[8] It urges student exchanges, travel, meetings, the study of foreign languages, and the twinning of towns and universities to foster cultural

[6] See Principle VI of the DYMPRU.
[7] See Preamble of the DYMPRU.
[8] See Principle V of the DYMPRU.

exchange.[9] Recalling specifically the experiences of World War II, but including international conflicts thereafter as well, the DYMPRU states that young people have suffered most and have been the "greatest number of victims" in those "conflagrations." It therefore demands that children should be "brought up in the knowledge of the dignity and equality of all men, without distinction as to race, color, ethnic origins or beliefs, and in respect for fundamental human rights and for the rights of peoples to self-determination."[10]

The final step that the international community took in the period under study was that of adopting the two international human rights treaties of 1966—the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. Those two human rights *covenants* (and hence sacred pledges) were designed, among other things, to give more specific legal content (in the form of rights) to the general standards contained in the Universal Declaration of Human Rights (UDHR). Indeed, together with the UDHR, these two covenants constitute what is today known as the International Bill of Human Rights—which was deemed necessary, by many of those who founded the post-World War II international system, if the moral order fought for in that war were to be fully realized. The place of children in the International Bill of Human Rights is, therefore—especially as the covenants elaborated or refined the UDHR—most weighty.

The covenants mention children, but that mention gives scant recognition to them as subjects. Rather, after identifying the family as the "natural and fundamental group

[9] See Principle IV of the DYMPRU.
[10] See Principle III and the Preamble of the DYMPRU.

unit of society,"[11] reciting the need for that unit to enjoy the assistance and *protection* of society as well as the state, and providing for the right of men and women to found a family, the covenants largely repeat the protections for children previously mentioned in the Child Welfare Charter.[12] So, although the covenants are very important from the standpoint of their having advanced the *idea* and the legally binding nature of human rights, they constitute a retreat from what the DRC and, in particular, the DYMPRU had achieved. A major contradiction began to show itself, however—a contradiction that manifested itself in the emerging, broader understanding of subjecthood and in the intimations of children as subjects, through what I will call the "candidacy" of certain norms. Why would the covenants return so forcefully to emphasize the family and the protection of children? The answer will, in part, be offered after a preliminary discussion below.

Earlier we mentioned the concept of subjects in international law. We saw them then as entities that are both lego-moral entitites, having rights and responsibilities (hence the importance of the DYMPRU, which gave some emphasis to responsibilities of children). But the law relating to subjecthood is not confined to matters of rights and duties, as is commonly supposed. That law is an expression of *power* relationships and the *interests* those relationships define.

When one says that an entity is a subject (be that subject a human being or an institution such as a state), one is also saying that the entity enjoys rights equal to other like subjects. And, by virtue of those rights, the entity is a co-equal of "like others" in the power those rights recognize and express. Further, since the power those rights express

[11] See article 10 of the ICESCR and article 23 of the ICCPR.
[12] See article 24 of the ICCPR. One may note a single excpetion in the right of children to a nationality.

implies that the entity which has that power likewise has interests that are independent of and may even be in conflict with those of other subjects, that power is also an important potential instrument in finding resolution between and among subjects that are mutually beneficial. We now return to the question as to why the international covenants seem to retreat on the matter of children as subjects.

Under the earlier mentioned care-taking ideology, there has been an assumption that one person or group of persons can determine what is in the best interest of others. An extension of that assumption, in the case of children, has been the outlook that a parent can, properly, determine what is best for them and that it is unlikely that there would be serious conflicts of interests between a parent and his or her child. For centuries, under this outlook, the legal and moral powerlessness of children was seen as a "normal" attribute of the adult-child (especially parent-child) relationship. Within the power asymmetry (adults are subjects, children are not) conflicts of interests between adults and children were almost always resolved in favor of adults. Hence the cruel, universal abuse of children.[13]

Nationally and internationally, the care-taking ideology was deployed to defeat the legal evolution of children as subjects. That deployment has not been without some justification. Children, it has been argued,[14] generally lack the mature intellectual, emotional and physical capacities that subjects (adults) either have or are presumed to have. For example, children (human beings under the age of eighteen) are said to be lacking in the ability to think and act with the requisite social and moral awareness of the

[13] It might be observed here that, in national societes, women were but recently recognized as subjects. And the ideology of care-taking was successfully used by males, for centuries, to thwart that recognition.
[14] Although it has been losing its dominance, this ideology is still with us, and, as seen in the introduction, powerfully so.

potential consequences of either their thoughts or actions.[15] In more specific terms, they lack the capacity to evaluate alternatives and make choices that are consistent with either their own interest or that of the community; and, most important, they cannot properly recognize the moral dignity of human beings or appreciate the rights and duties with which that dignity is constituted. Part of the care-taking ideology, although at times operating somewhat independently of it, has been the associated powerlessness of children in the conflict between what has been called the public (political) and the private spheres.

Since, as claimed, children lack important capacities, it follows that rights such as those linked to the principle of "democratic entitlement"—the right to represent one's self (including one's interests) or to have that self represented by another in the public sphere—have been denied them, even though such a denial has perpetuated their essential powerlessness. Increasing that powerlessness and expressive of it has been the historical division between the public and the private sphere. Only the public sphere was occupied by subjects. Those who were not subjects were left to the governance of the family, the private sphere. So children and their concerns would become part of public discourse only to the extent that such discourse had a bearing on placing them more securely within the confines of the family, under the protection and control of adults.

Confining children generally to the protection and control of the private sphere is precisely what the two 1966 covenants do. Their emphasis on the family as the "natural and fundamental group unit of society," on the right to found a family, and the protection of children within that family illustrate this claim very well. Society and the state may

[15] The presumption that adults possess these capacities can be overcome by establishing their "incapacities" or "diminished capacities". Yet, even in cases where the presumption is rebutted, adults have continued to be regarded as subjects.

have some protective functions also, but only as back-up to the family. On the other hand, the two post-1945 declarations, the DRC and DYMPRU, began an assault on the care-taking ideology and that ideology's historical success in preventing children, despite their status as humans, from acquiring the status of subjects. Thus, the DRC speaks of the child's right to housing, recreation, education, medical services, pre-natal and post-natal care, as well as his or her right to protection against all forms of neglect, cruelty, and exploitation. And, as seen earlier, the DYMPRU, in part, defines with the type of education children should have—one that gives them knowledge of the dignity and equality of all human beings, that will nurture the spirit of peace, justice and freedom for all human beings and nations, and that will enable them to become conscious of their duty, not only to help the UN achieve its ends but, as well, their *responsibilities* to a world they will later in life be called on to manage and lead.

What is most significant about the DRC and the DYMPRU, apart from any specific rights they may or may not recognize is that, unlike the Child Welfare Charter, the Universal Declaration of Human Rights, and the two international covenants, they articulate at least three common positions that are in opposition to the care-taking ideology: one, the DRC and the DYMPRU acknowledge that children have interests that are independent of adults, including those of parents. Two, both recognize rights that, at least in part, are consonant with those interests. Three, both accept, as the earlier human rights instruments do, that adults—in the institutional form of the family, society, as well as local, national, and international governments—have responsibilities toward children, because of the latter's "physical and mental immaturity." This acceptance, however it may be otherwise interpreted, does not mean that DRC and DYMPRU are supporting,

through a legal or moral backdoor, the values of the care-taking ideology. Rather, they are disclosing that notwithstanding the kind and degree of immaturity that children may have, they have interests that not only differ from but often are in conflict with those of adults, including parents. As such, adults, including parents, have but a revocable trust in discharging their (protective) responsibilities toward the humans we call children. And such trustees must have as their guiding principle "the best interest of the child." If the trustee fails to discharge that responsibility, in accord with the guiding principle, the child, implicitly, has the right to legal action. The moral and legal possibility of the latter course of action, properly understood, confers power on every child. Let us return to our earlier discussion on "norm candidates," the claim that children (even in light of DRC and DYMPRU) remained objects in international law, and the contradiction between the status of object and the indications that those "objects" were recognized as having rights, having duties, and even sharing special responsibilities to be partners with the UN in shaping a global order of peace and security. After all, only subjects have rights and responsibilities.

The contradiction can be explained by the fact that, in a world pervaded by the ideology of care-taking, political leaders (including leaders of states) were unprepared to "stray too far," especially from dominant adults to whom those leaders are accountable. Most of those adults, have been unwilling to share power with children, from whom they would have to fear little or no challenge in the area of power, as long children were classified as objects (even as property). So, although rights were "recognized" in DRC and DYMPRU, that recognition would not be incorporated in international instruments that could be *legally* enforced. Hence the 1959 and 1965 instruments are *declarations,*

which, by themselves, are not legally binding on states. And, in the case of the two covenants of 1966, the drafters of these human rights instruments, by and large, returned to the ideology of care-taking. So why did nation-states and their leaders, agree to "recognize" rights in the form of declarations, thus leaving the would-be beneficiaries of that recognition at least a claim the status of subjects? Why not simply leave children as objects?

First, to do so would be to continue the morally insupportable contradiction to the human rights concept and the human rights movement. Children are human beings. And if by virtue of being human, one is a subject, then it follows that children must also be subjects. Second, children, as before indicated, have been viewed as playing an important role in the social and moral constitution of any ideal world order; and only subjects can play such a role. Third, as previously explained with reference to World War II, adults who were presumed to have the interest of children in mind, committed unspeakable atrocities against them. The history of childhood before that war and since has been generally unflattering to adults, who have continued to rape, kill (especially in times of war), prostitute and otherwise exploit them. Fourth, many enlightened people had begun to exert pressures on political leaders and countries by claiming that no one who loves children (even one who views a gain in power for children as a loss for adults thinks of him or herself as one who loves children) should accord them a status less favorable than that of even the most hardened criminal. Therefore, international human rights instruments created to address the problems just touched on make children candidates for subjecthood, not actual subjects. And this leads us directly to the idea of "norm candidates" and their role in the legal liberation of children.

A norm is a standard of recommended conduct (and it can be recommended by custom, by statute, authoritative pronouncements, or emerging practices), which is generally viewed by members of the group it serves as binding on them. As well, it serves as a means to guide or regulate behavior among those members. A candidate, on the other hand, is a thing or person which (who) is offered or is an aspirant for office, membership, or status. In international (as well as domestic law), certain moral and legal principles or claims often exist more as candidates for the status or office of standard than as standards themselves. Such lego-moral principles or claims, in international relations, are really nominees—often very attractive, especially to their supporters—offered by nation-states to placate potential voters which are, themselves, states. (Of course, states respond to individual and group constituencies within their borders, as well as other states.) These moral or legal claims, we call norm-candidates. Although many such candidates are sometimes offered, not many are chosen as norms; and even when a few are chosen, the process of choice often takes many years.

When the 1959 and 1965 human rights instruments previously mentioned were adopted by the UN General Assembly, the principles and claims they housed were included as norm candidates, at best. Most of the nation-states that voted to adopt them, as was the case of the Universal Declaration of Human Rights, did not intend to bind themselves legally; and many would not have supported them at all, if they were to be binding. All, continuing under the ideology of care-taking, were giving themselves time to "test the waters" of national and international life. If there were no taskers or only a few, then the old ideology would continue to reign. Hence the 1966 covenants did not seek to incorporate the "rights" recited in the DRC and the DYMPRU; and the latter two

instruments, in which the rights were "recognized," were not legally binding. If these norm-candidates (called rights) in the 1959 and the 1965 human rights instruments were to become international legal norms, they would arrive at that coveted and lofty status only after the usually long life of norm-candidates.

The text of the Declaration on the Rights of the Child and the Declaration on the Promotion Among Youth of the Ideals of Peace and Mutual Respect and Understanding Between Peoples, as well as the relevant portions of the two international covenants, complete this section.

Declaration on the Rights of the Child

[Proclaimed by General Assembly resolution 1386(XIV) of November 20, 1959.]

Preamble

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

PRINCIPLE 3

The child shall be entitled from his birth to a name and a nationality.

PRINCIPLE 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

PRINCIPLE 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

PRINCIPLE 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

PRINCIPLE 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

PRINCIPLE 8

The child shall in all circumstances be among the first to receive protection and relief.

PRINCIPLE 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any

occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

PRINCIPLE 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

Declaration on the Promotion Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples

[Proclaimed by General Assembly resolution 2037 (XX) of December 7, 1965.]

The General Assembly,

Recalling that under the terms of the Charter of the United Nations the peoples have declared themselves determined to save succeeding generations from the scourge of war,

Recalling further that in the Charter the United Nations has affirmed its faith in fundamental human rights, in the dignity of the human person and in the equal rights of men and nations,

Reaffirming the principles embodied in the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, General Assembly resolution 110 (II) of 3 November 1947 condemning all forms of propaganda designed or likely to provoke or encourage any threat to the peace, the Declaration of the Rights of the Child, and General Assembly resolution 1572 (XV) of 18 December 1960, which have a particular bearing upon the upbringing of young people in a spirit of peace, mutual respect and understanding among peoples,

Recalling that the purpose of the United Nations Educational, Scientific and Cultural Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture, and recognizing the role and contributions of that organization towards the education of young people in the spirit of international understanding, cooperation and peace,

Taking into consideration the fact that in the conflagrations which have afflicted mankind it is the young people who have had to suffer most and who have had the greatest number of victims,

Convinced that young people wish to have an assured future and that peace, freedom and justice are among the chief guarantees that their desire for happiness will be fulfilled,

Bearing in mind the important part being played by young people in every field of human endeavour and the fact that they are destined to guide the fortunes of mankind,

Bearing in mind furthermore that, in this age of great scientific, technological and cultural achievements, the energies, enthusiasm and creative abilities of the young should be devoted to the material and spiritual advancement of all peoples,

Convinced that the young people should know, respect and develop the cultural heritage of their own country and that of all mankind,

Convinced furthermore that the education of the young and exchanges of young people and of ideas in a spirit of peace, mutual respect and understanding between peoples can help to improve international relations and to strengthen peace and security,

Proclaims this Declaration on the Promotion among Youth of the Ideals of

Ideals of Peace, Respect and Understanding

Peace, Mutual Respect and Understanding between Peoples and calls upon Governments, non-governmental organizations and youth movements to recognize the principles set forth therein and to ensure their observance by means of appropriate measures:

Principle I

Young people shall be brought up in the spirit of peace, justice, freedom, mutual respect and understanding in order to promote equal rights for all human beings and all nations, economic and social progress, disarmament and the maintenance of international peace and security.

Principle II

All means of education, including as of major importance the guidance given by parents or family, instruction and information intended for the young should foster among them the ideals of peace, humanity, liberty and international solidarity and all other ideals which help to being peoples closer together, and acquaint them with the role entrusted to the United Nations as a means of preserving and maintaining peace and promoting international understanding and co-operation.

Principle III

Young people shall be brought up in the knowledge of thc dignity and equality of all men, without distinction as to race, colour, ethnic origins or beliefs, and in respect for fundamental human rights and for the rights of peoples to self-determination.

Principle IV

Exchanges, travel, tourism, meetings, the study of foreign languages, the twinning of towns and universities without discrimination and similar activities should be encouraged and facilitated among young people of all countries in order to bring them together in educational, cultural and sporting activities in the spirit of this Declaration.

Principle V

National and international associations of young people should be encouraged to promote the purposes of the United Nations, particularly international peace and security, friendly relations among nations based on respect for the equal sovereignty of States, the final abolition of colonialism and of racial discimination and other violations of human rights.

Youth organizations in accordance with this Declaration should take all appropriate measures within their respective fields of activity in order to make their contribution without any discrimination to the work of educating the young generation in accordance with these ideals.

Such organizations, in conformity with the principle of freedom of association, should promote the free exchange of ideas in the spirit of the principles of this Declaration and of the purposes of the United Nations set forth in the Charter.

IX. Marriage, Family and Children

All youth organizations should conform to the principles set forth in this Declaration.

Principle VI

A major aim in educating the young shall be to develop all their faculties and to train them to acquire higher moral qualities, to be deeply attached to the noble ideals of peace, liberty, the dignity and equality of all men, and imbued with respect and love for humanity and its creative achievements. To this end the family has an important role to play.

Young people must become conscious of their responsibilities in the world they will be called upon to manage and should be inspired with confidence in a future of happiness for mankind.

International Covenant on Economic, Social and Cultural Rights

Adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966

Entry into force: 3 January 1976, in accordance with article 27

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the states Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

Article 10

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of the family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

PART III: SUBJECTHOOD WON

1967-1989

The covenants were passed in 1966. But it would take another thirty-three years (from 1966), before the United Nations, on November 20, 1989, adopted the Convention on the Rights of the Child (CRC). That convention became part of international law on September 2, 1990, and is today the most widely ratified international treaty. Most important, a large portion of the human family, who happen to be children, are now full-fledged subjects of international law. What does this subjecthood mean? What were some of the factors that contributed to children achieving that status? And what is the broader significance of this status for the international society when engaged in international conduct such as warfare?

The scope of this volume does not allow for detailed answers to these questions, but one can briefly touch on each, so that the reader can get a sense of the historical importance of the CRC, the Magna Carta for Children.

Apart from the conceptual meaning of subjecthood, discussed earlier, the CRC signifies a fundamental shift from the view of children as persons with special *needs* to persons with *rights*. Those rights, with a few exceptions such as the right to vote, parallel those which every human adult is recognized as having. They include the right to life; to education; to protection against discrimination on the basis of nationality, race, sex, religion, or other status; to protection against injury, neglect, and abuse; to a name and nationality; to express views in matters important to one; to freedom of thought,

conscience and religion; to health services; to be protected against cruel, inhuman or degrading treatment; to food; to housing; to association; to benefit from social security; to rest; and to protection against exploitation in the area of work, regardless of status.[1] As important as this is, the CRC is more than a catalogue of rights, which are associated with subjecthood. Indeed, the scope, innovative nature, and implementation mechanism of the convention are indicative of some other very important developments in international relations.

The CRC has a grand scope. It combines in a single document—the only human rights convention to do so—every major area of human rights emphasis. That is, it embraces those rights that are conventionally classified as civil and political as well as those which are grouped as economic, social, and cultural, with the latter grouping including what we have come to call environmental rights. Thus, the convention supports and reinforces the idea that classes of human rights are interconnected, mutually reinforcing, and indivisible—an idea that many states have tried to deny or circumvent. Likewise, the CRC emphasizes not only the protection and empowerment of children, but it also seeks to ensure their well-being and *development*, with development understood to be the progressive unfolding of their personality and potential. Additionally, it incorporates—sometimes by specific reference—all other human rights instruments that had earlier been adopted within the UN system to offer protection to children.[2] And

[1] See arts. 2, 3, 12, 14, 19, 34, 35, and 37 of the CRC; see, also, Per Miljeteig-Olssen, "Advancing Children's Rights--The Convention as More than a Legal Document," in *Human Rights Quarterly*, Vol. XXII, (1990), pp. 148-155.

[2] See, for example, the 1959 Declaration on the Rights of the Child, the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and the 1973 ILO Convention Concerning Minimum Age for Admission to Emoployment.

while some of those instruments, by themselves, may not be legally binding, they have become potentially so by virtue of that incorporation.[3]

While the CRC incorporates broad areas of previous international human rights standards concerning children, some of its most important contributions to the human rights movement and regime are the new standards it brings into being. First, consistent with the terms of the DYMPRU, which envisions children as future leaders of society, the CRC introduces "participation" rights—rights that were absent from all earlier human rights instruments. So, children have the right to take part in and express their views about matters affecting them. These rights, of course, are linked to the right to education, to freedom of thought, conscience and religion, and the right to be informed (including being informed of their rights), so that their rights can be properly exercised. Second, the convention provides that children have the right to rehabilitation, if they have suffered cruelty and exploitation. And governments are pledged to take appropriate legislative and other action to abolish *traditional* practices (genital mutilation, for instance) that are harmful to children's health. Third, the CRC explicitly includes standards that only non-binding, global agreements had previously touched on; for example, standards governing adoption, including inter-country adoption, and juvenile justice. Fourth, it is the first binding international human rights instrument that *organically* ties together civil and political rights as well as economic, social, and cultural rights.[4]

The substantive innovations mentioned above are accompanied by two conceptual features of the convention that are designed to help in interpreting and applying it. These

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[3] The qualifying phrase *potentially so* is used because only states which ratify the CRC can be bound by the incorporated instrments.

[4] The Universal Declaration of human rights combined both categories of rights, but it was not a binding

features (which further help one to understand the scope of the CRC as well as the idea of development and the view that children have interests that may be in conflict with those of adults) are: the "best interest of the child," which is the criterion for all actions concerning children, and that of "evolving capacities," which bears on the exercise of specific rights recognized by the convention. Obviously, the idea of children having interests that may be separate from and independent of adults' interests is linked to the concept of the "best interest of the child." Likewise, the rights of children that are primitive of their development are hinged to the concept of "evolving capacities."

Contributing to an understanding of the CRC's scope, but also focusing on its particular provisions for the enforcement of its terms, is its implementation mechanism. That mechanism, provided for in the convention, is the Committee on the Rights of the Child.[5] It is composed of ten experts of high moral standing and internationally recognized competence in the areas covered by the CRC, and it has the authority to monitor and ensure the enforcement of the obligations states have assumed under the convention. These experts, serving in their personal capacity (as distinct from being representatives of governments) are elected by states for a term of four years and are eligible for re-election if they are renominated.[6]

In discharging its duty of monitoring and ensuring the full implementation of the CRC, the Committee is authorized to: 1) encourage the development of a culture of human rights, 2) promote accountability and transparency, 3) help states to meet the terms of the convention, where such help is needed, and 4) make policy suggestions to the

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instrument at the time when it was adopted. Hence the term "declaration."

[5] See arts. 43 and 44 of the CRC.

[6] Only states which have ratified the convention are eligible to participate in electing the Committee.

United Nations Commission on Human Rights, which are likely to advance the vision and spirit of the convention.[7] We will look at each area of authorization, in turn.

Emphasing a culture of human rights means several things. First, that states should be helped to understand that fundamental to human rights is the norm of *respect* for all human beings, including children, who, as Wordsworth has told us, are really the fathers and mothers of men and women. Second, that respect means, among other things, listening to the views and nurturing the unique potential of the most vulnerable , not trying to reproduce ourselves through them. Third, that respect for children and their rights is not "an option...a question of favor or kindness to children, or an expression of charity."[8] And fourth, the rights of the child should be promoted in the context of all those factors that affect children—from the physical and social environment of the family, community, and nation that may result in their invisibility and marginalization or may invite threats, to their wholesome development, to the general moral, economic, and political contours of an international system which are influenced by and in turn promote the abuse and even the killing of children.

As regards the promotion of transparency and accountability, the Committee has the authority to ensure that states adopt all the necessary and appropriate legislative, judicial, administrative, educational, social, and other measures to harmonize national law and policy with the requirements of the convention. But whether or not a state fulfills its obligations under the terms of the convention can be known only if there is a *process* that allows the Committee access to what that state does or fails to do. The convention

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[7] Marta Santos Pais, "The Vision for Children: The Convention on the Rights of the Child" in Yael Danieli, Elsa Stamatopoulou, Clarence J. Dias, eds., *The Universal Declaration of Human Rights: Fifty Years Beyond* (NewYork: Baywood Publishing Company, Inc., 1999), pp. 131-143.

provides for that process by requiring countries to submit to the Committee periodic reports containing information on what has been done to implement their assumed obligations under the convention. The report should be a self-critical assessment. Information on specific measures taken by the reporting state, the results realized from those measures taken, the problems encountered, if any, in the process of implementation, and the nature of future policy action contemplated must be included. Since the Committee will be securing information from others sources (from intergovernmental organizations such as UNICEF and UNESCO as well as from non-governmental organizations that are also familiar with each reporting country), it will be able to strike a balance between what each state claims in its report and other information the Committee has obtained. The Committee can then make its appraisal of the action taken by each state to fulfill its pledged obligation under the convention and make suggestions for improvement. (It is perhaps appropriate to observe here that, associated with transparency, is the opening up of the "private space of family governance" to national and international regulation).

In cases where states need specific advice or technical help, such as the training of personnel and the development of scholarly resources, the Committee, in cooperation with other human rights organs of the UN, will offer that help. The Committee may also make suggestions to the organ of the UN which is most directly responsible for overseeing the human rights aims of the UN (the Commission on Human Rights) on ways the convention may be strengthened, in order to better realize that instrument's spirit and purposes. An example of the latter course of conduct was the 1993 successful request by

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[8] *Ibid.*, p. 133

the Committee to the Commission on Human Rights for the establishment of a Working Group to draw up an additional protocol to the convention, one that would increase the age for children to participate in armed hostilities from 15 to 18 years of age. (The results of that request were adopted by the General Assembly in May of 2000 and are discussed in the next section of this volume). And this brings us to the final two features that speak to the meaning and significance of the convention: a few areas of controversy, and the potential role of the convention in transforming global society.

Any accurate measure of the significance of any development in human moral or social evolution should not only focus on the degree of ecumenical agreement or solidarity that the development elicits (the near universal, general support for the convention, for example), but, as well, the degree of dissent such development provokes. In the case of the CRC, considerable controversy emerged during its drafting stages, especially around such topics as the right of the unborn child, the right to adoption and foster care, freedom of religion, and the minimum age for participation in armed combat.[9] These areas of controversy have, in part, continued, because they bear on values that many societies regard as profoundly important. Brief examples of each should be helpful.

In the case of the rights of the unborn child, the drafters of the CRC were confronted with the question of when is a fetus a child and, therefore, entitled to the rights recognized under the convention. For some countries, the time of conception is the beginning of childhood; for others, it is a later date.[10] To arrive at a consensus, in face of the disagreements and passions accompanying those disagreements, the drafters defined a

[9] See Cynthia P. Cohen, "Introductory Note" to the convention in *International Legal Materials*, Vol. XXVIII (1989), pp. 1448-1454; Philip Alston, "The Unborn Child and Abortion Under the Draft Convention on the Rights of the Child" in *Human Rights Quarterly*, Vol. XXII (1990), pp. 157-178.

child as "every human being below the age of eighteen years of age..."[11] The issue of when childhood begins is, therefore, left unsettled under the convention. As regards the right to adoption and foster care and that of the right to freedom of religion, controversy centered around positions taken by some Islamic countries, which argued that such rights could conflict with the Koran and national legislation in accordance with the Koran. Their position is that adults, not children, chose religion (in Islamic countries such as Saudi Arabia, conversion by adults to other religions is still not legally possible). Consensus was won in article 14 of the CRC, however, to recognize the right to freedom of religion "consistent with the evolving capacities of the child."

Islam does not recognize adoption. So, problems arose during the drafting of the convention as states sought to find ways of ensuring special protection for children who are, for whatever reason, deprived of their family environment and thus need alternative family care or institutional placement available to them. The CRC provides for the right to adoption, but it also incorporates, as an alternative, the Islamic concept of *Kafalah*. The latter defines a practice, in Islamic countries, of caring for orphaned or abandoned children. In that practice, a family takes a child to live with it on a permanent, legal basis. And that child will be cared for, as a child of that family. The child, however, is not allowed to use the family's name as its own, and is not entitled to inherit from the family.

The minimum age for human beings to be legal participants in armed combat was placed at 18 years of age by the 1977 Geneva Protocols—international agreements which have sought to deal with what has come to be called the humanitarian aspects of warfare. And, consistent with the previously mentioned 1965 Declaration on the Promotion

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[10] Philip Alson's work, cited above, offers an excellent discussion on the issue.

Among Youth of the Ideals of Peace, Mutual Respect and Understanding Between Peoples, an overwhelming number of countries wanted to make the age of combat 18 part of the CRC. There was strong opposition from the United States, however. That country exerted considerable pressure on the group to complete the convention by 1989, and thereby prevented a change from an earlier draft of the convention which stated 15 years of age as the age of combat. (As before mentioned, a protocol was adopted in May of 2000 to effect a change from 15 to 18 years.) We now turn to the potential role of the convention in the generally sought transformation of global society. And, in seeking to sketch this potential role, we will consider the constitutional duties the convention imposes on governments, some of the changes , which, of necessity, will have to accompany the fulfillment of those duties, the interactive nature of the relationship between adults and children, and the ecological character of the rights recognized by the convention.

In the matter of constitutional duties, the convention requires that states that have ratified it make changes in their own constitutions and other national laws (as well as institutions, plans, policies and practices) so that such laws and practices or policies are brought into compliance with its terms.[12] Such compliance, where it takes place, will not only change *national* life but, as well, *international* society. For instance, Tunisia's Code for the Protection of Children, which was adopted by that country in 1995, contains 123 articles that are shaped to bring that country's national laws into compliance with the

[11] See art. 1 of the CRC.
[12] The Committee on the Rights of the Child has the authority to monitor such changes.

CRC. The changes contemplated by the code include how Tunisia *expects* its children to be treated by other countries.[13]

Connected to the just-described example of constitutional changes are other modifications in local and national life and, by extension, international life, which will have to take place throughout the world. Teachers, public administrators, lawyers, judges, police persons, social workers as well as other "care-takers," including parents, will have to be trained in the principles and the application of the convention. So, in Honduras, for example, where an adopted Children's Rights Code came into being in September of 1996, immediate training had to be provided for 75 judges, 293 majors, and 300 staff persons in governmental and non-governmental organizations. Likewise, in Uganda, which, for all its problems, adopted a new Children's Statute in 1996, a statute regarded by children's rights advocates as a pioneering and historic step for Africa South of the Sahara, provisions have been made for the establishment of Family and Children's Courts in every district.[14] The newly defined interactive nature of the relationship between children and adults will also bear on the transformation of international society.

Here one can begin by noting that if children are truly subjects, they must be able to sue in their own names.[15] And to facilitate such an exercise of their rights, they should have a sound knowledge of the norms that define those rights. That knowledge will not only change the attitudes of children toward adults, but, reciprocally, of adults

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[13] See United Nations Children's Fund, *The State of the World's Children 1997* (New York: Oxford University Press, 1997), p. 12.
[14] *Ibid.*
[15] For many adults, this right is one they would rather not face. And, to induce electorates to support ratification of the convention, many children's rights advocates have been rather vague on this issue.

toward children. The expectations that a child will have developed toward adults, grounded on his or her knowledge and understanding of his or her rights, will induce adults to share these expectations. (And many adults, independent of children, will also have to develop a certain expectation of themselves, if they are to discharge their assumed duties toward children under the convention). The mutual sharing of these expectations, on the part of adults and children, will itself help to define a wider socialization process within and out of which daughters and sons will grow to expand and to reinforce that process.

The *shared expectations* of adults and children and the broader socialization process those expectations will begin to shape will not confine their impact to the local communities to which families physically "belong." They will have a reverberating effect on the larger society, beginning with demands by both children and parents that governments reflect their expectations. How will the right to life, and the right to be "brought up in the spirit of peace," for example, affect parents and their attitudes to- ward their children as well as children's and parents' attitudes toward war? And this brings us, in our sketch of the convention's potential to transform global society, to the ecological nature of the rights recognized in the CRC.

Essential to every child's survival, protection, and participation in the life of his or her community and society and progressive spiritual and moral development, is the full range of civil, political, economic, social and cultural rights. The convention recognizes these rights as an interdependent and indivisible whole. It is not only that these rights, as contained by the convention, are interrelated; it is also that this interrelationship is, in turn, interwoven into the broader concept and reality of *human security*. That concept, as

developed at the March 1995 World Summit for Social Development in Copenhagen, Denmark, argues that a secure future for humankind and for the integrity of the other life communities, within which humans live and move and have their being, requires a fundamental reordering of resources, including resources allowed for military expenditures linked to *national* security.[16] Indeed, it was rightly argued at that Summit that it was the lack of *human security*—in social, cultural, economic, civil, political, and moral terms—that has caused the need for such expenditures. As adults become involved in implementing the rights of the child, they will come to find that the character of that implementation is so imbedded in the mutual kinship of all human beings and our broader life communities that it entails nothing less than *human security.* And such a realization cannot but have a profound and ever-expanding effect on international relations and international law. An example of how the rights covered by the convention affect armed conflict follows:

During armed conflicts, all aspects of a child's development—emotional, mental, physical, and moral--are affected, and as discussed in Part II with relation to World War II, a child's rights are interfered with. In the case of the right to physical health, it is generally always violated, since health facilities are often restricted in their activities, looted, or even forced to close. Restrictions on travel or disruption of roads hamper supply and distribution of drugs and other medical supplies—if those supplies are available. And some health services are sometimes diverted to military purposes. As important, the disruption of electrical generating capacity results in hospitals that cannot function, the spoiling of perishable medicine, water that cannot be purified, and raw

[16] See World Summit for Social Development, *Copenhagen Declaration and Programme of Action*,

sewage that cannot be processed.[17] Other areas where the right to health is generally violated include the disastrous effects of bombs, landmines, rape, or even lack of ante-natal care for children.[18] A like impact is found the right to food.

One of the most immediate effects of armed conflicts is the disruption of food supplies.[19] Farmers, many of whom are women and older children, generally become fearful of working in fields that are "far from home" and so, reduce the area under cultivation. The destruction or disruption of water sources, flood controls, and systems of irrigation also adversely affects food supply. And when roads are destroyed less food get to market. Lack of adequate food causes malnutrition. While mothers can often breastfeed their children under even severely malnourished conditions, the psychologically traumatic conditions of war impair their capacity to breastfeed.

A child's right to education is always subject to violation during times of war. These violations become evident when school buildings are destroyed, teachers are arrested, neighbors' children with whom others had played yesterday are mysteriously missing or have become fearsome enemies today. Fear and disruption subvert the social and psychological atmosphere that permits and nurtures learning. A war of months or years aborts the opportunities for education. There is an area of armed conflict that affects a child's right to education, one fact that is often overlooked. The topic is admirably

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(1995).

[17] See, for example, *Harvard Study Team Report: Public Health in Iraq After the Culf War* (Harvard School of Public Health, May 1991), p. 3.

[18] See United Nations, *Impact of Armed Conflict on Children* (Report of Grace Machel, Expert of the Secretary-General of the United Nations), UN Doc. A/51/306 and Add.1.

[19] *Ibid.*

explored by the earlier-mentioned UN study on the impact of armed conflict on children.[20] That area is the culture of war and the violence it sponsors.[21]

States, in the supposed pursuit of "national security," must prepare for war. That readiness, as it is sometimes called, entails the *social manufacturing* of individual and social types who can fight a war. Such individuals and societies must be taught that they are different from "others"; that such "others" cannot be trusted and that they are actual or potential enemies; that the claimed differences between the group (state) to which one belongs and to which the "other" belongs entail competing values of beauty and ugliness, freedom and tyranny, goodness and evil, rationality and madness; and that, finally, such "others" are proper objects of dislike, discrimination, hatred, and even destruction. In short, a cultural attitude of suspicion, false moral elevation, and a disposition to dehumanize and kill others must be cultivated. Children, under the CRC, have the right to grow up in a culture that promotes a "sense of moral and social responsibility," and to be exposed to an education which will give them a knowledge of the *dignity* and *equality* of *all* human beings (not merely their co-nationals or co-religionists); and that will nurture in them the spirit of peace, justice and freedom, so that they can foster "the equal rights of all human beings and all nations"—not national security.

What all these areas of examples—health care, food and education—suggest is that, in the preparation for armed conflicts, the rights of children are invariably violated. In particular, they suggest that the culture of war and human rights cannot co-exist. And

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[20] See footnote #18.

[21] For a recent volume on this subject see Elise Boulding's *Cultures of Peace: The Hidden Side of History* (Syracuse, New York: Syracuse University Press, 2000).

as children, along with parents, come to demand the fulfillment of those rights, a substitute for the culture of war will have to be found. The International Bill of Human Rights, specifically article 28 of the Universal Declaration of Human Rights, and the spirit of the United Nations Charter, provide for that possible substitute. The article proclaims that everyone is entitled to a social and an international order within which all the human rights recognized can be fully realized. The CRC will bring people closer to understanding the need to bring that order into being.

The text of the Convention on the Rights of the Child follows.

Convention on the Rights of the Child

[Adopted by General Assembly resolution 44/25 on November 20, 1989.
28 I. L. M. 1448. 44 U.N. GAOR Supp. (no. 49), 165 U.N. Doc. A/44/736(1989).]

PREAMBLE

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live in an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special

safeguards and care, including appropriate legal protection, before as well as after birth,"

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); 8/ and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards

established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or

neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of the States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(*a*) For respect of the rights or reputations of others; or

(*b*) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the

promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(*a*) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(*b*) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(*c*) Encourage the production and dissemination of children's books;

(*d*) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(*e*) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(*a*) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(*b*) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(*c*) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(*d*) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(*e*) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same

protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(*a*) To diminish infant and child mortality;

(*b*) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(*c*) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(*d*) To ensure appropriate pre-natal and post-natal health care for mothers;

(*e*) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(*f*) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(*a*) Make primary education compulsory and available free to all;

(*b*) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(*c*) Make higher education accessible to all on the basis of capacity by every appropriate means;

(*d*) Make educational and vocational information and guidance available and accessible to all children;

(*e*) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(*a*) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(*b*) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(*c*) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(*d*) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(*e*) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

IX. Marriage, Family and Children

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(*a*) Provide for a minimum age or minimum ages for admission to employment;

(*b*) Provide for appropriate regulation of the hours and conditions of employment;

(*c*) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(*a*) The inducement or coercion of a child to engage in any unlawful sexual activity;

(*b*) The exploitative use of children in prostitution or other unlawful sexual practices;

(*c*) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(*a*) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(*b*) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(*c*) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(*d*) Every child deprived of his of her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain form recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the

age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(*a*) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(*b*) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(*a*) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(*b*) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(*a*) The law of a State Party; or

(*b*) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The Members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the

Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(*a*) Within two years of the entry into force of the Convention for the State Party concerned;

(*b*) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide

the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (*b*) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(*a*) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(*b*) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(*c*) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(*d*) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

IX. Marriage, Family and Children

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate wheter they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on whch it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

PART IV: STRENGTHENING THE CHARTER

1990-2000

In Part III, we made reference to some of the activities of the Committee on the Rights of the Child and its successful 1993 request to the United Nations Commission on Human Rights to establish or designate a Working Group to draw up additional rights and protections (in the form of protocols) to the Convention on the Rights of the Child. The Commission on Human Rights, through its relevant Working Group, proposed two such protocols and forwarded them to its parent body, the United Nations Economic and Social Council. The latter body, in turn, sent them to the General Assembly of the United Nations, where they were adopted on May 16, 2000.

These protocols seek to protect children from some of the worst forms of exploitation. The first of the two seeks to protect them from being used as "child soldiers." The second aspires to protect them from, among other things, child prostitution and child pornography, and to ensure that neither children nor portions of their bodies are made the object of commercial transactions. Such transactions, defined in articles 2 and 3 of Protocol II, include any act or transaction by which a child is transferred by any person or group of persons to another for remuneration or any other consideration. And child prostitution means the "use of a child in sexual activity for remuneration or *any other form* (writer's emphasis) of consideration." Finally, child pornography, according to article 2 of the second protocol, refers to "any representation, by whatever means, of a

child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child primarily for sexual purposes."

Following are the texts of the two protocols:

UNITED
NATIONS

A

General
Assembly

Distr.
GENERAL

A/54/L.84
16May2000

Original:ENGLISH

Draft resolution recommended by the Economic and Social Council

Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography

The General Assembly,

Recalling all its previous resolutions on the rights of the child topic, and in particular its resolution 54/149 of 17 December 1999, in which it strongly supported the work of the open-ended inter-sessional working groups and urged them to finalize their work before the tenth anniversary of the entry into force of the Convention on the Rights of the Child,1

Expressing its appreciation to the Commission on Human Rights for having finalized the texts of the two optional protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography,

Conscious of the tenth anniversaries, in the year 2000, of the World Summit for Children and the entry into force of the Convention on the Rights of the Child and of the symbolic and practical importance of the adoption of the two optional protocols to the Convention on the Rights of the Child before the special session of the General Assembly for the follow-up to the World Summit for Children, to be convened in 2001,

Adhering to the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Reaffirming its commitment to strive for the promotion and protection of the rights of the child in all avenues of life,

Recognizing that the adoption and implementation of the two optional protocols will make a substantial contribution to the promotion and protection of the rights of the child,

1. Adopts and opens for signature, ratification and accession the two optional protocols to the Convention on the Rights of the Child,1 on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, the texts of which are annexed to the present resolution;

2. Invites all States that have signed, ratified or acceded to the Convention on the Rights of the Child to

sign and ratify or accede to the annexed optional protocols as soon as possible in order to facilitate their early entry into force;

3. Decides that the two optional protocols to the Convention on the Rights of the Child will be opened for signature at the special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century", to be convened from 5 to 9 June 2000 in New York, and thereafter at United Nations Headquarters, at the special session of the General Assembly, entitled "World Summit for Social Development and beyond: achieving social development for all in a globalizing world", to be convened from 26 to 30 June 2000 in Geneva, and at the Millennium Summit of the United Nations, to be convened from 6 to 8 September 2000 in New York;

4. Requests the Secretary-General to include information on the status of the two optional protocols in his regular report to the General Assembly on the status of the Convention on the Rights of the Child.

Annex I

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child,1 demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

2 A/CONF.183/9.

Noting the adoption of the Statute of the International Criminal Court2 and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth international Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children

under the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that this Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child,1 taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed

forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

(b) Such recruitment is done with the informed consent of the person's parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and

financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 13.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Annex II

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child1 and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving

technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

3 Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A, resolution 1992/74, annex.

4 A/51/385, annex.

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography3 and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996,4 and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) The offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are commited in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States

Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

Article 12

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

1. Resolution 44/25, annex.

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Geneva, Switzerland

Conclusion

Despite what public officials have been saying about their commitment to children – "leave no child behind," for example – leaders and their societies have been slow in recognizing children as persons with claims or with the rights that all other human beings enjoy. The United Nations, also, in spite of its laudatory work advancing human rights, has been less than steadfast in seeking to implement the textual elaboration of rights it has sponsored on behalf of children (one has only to look at the UN-authorized sanctions against Iraq and their impact on children).

We are at the beginning of a new century. And as beginnings go, people have opportunities to modify, alter, and otherwise change long-standing patterns of behavior. The Magna Carta for Children offers us one such opportunity to change established patterns of behavior, and, with that change, a chance to shape (however incrementally at first) a new social order. It is my hope that each person who reads this volume will make that change her or his own.

GLOSSARY

Adoption The formal act by which states that have negotiated a treaty accept the text of that treaty, as district from the obligations of its terms. In international instruments that are not formal treaties, adoption sometimes can mean acceptance of the terms of the instrument. The process of adoption varies, but if a treaty were negotiated at an international conference, for example, its text may be adopted by a two-thirds vote or by any other percentage that may have been agreed upon.

Competence This expression refers to the legal fitness or capacity of a court or other like body to exercise jurisdiction or authority over an issue brought before it. The term may also refer to the quality of evidence offered in court or any other like body responsible for making decisions affecting the public.

Consideration This term is one found in the law of contract. And it refers to anything done, forborne or undergone, or promised to be done, forborne, or undergone by a person or group of persons, *in exchange* for something done, forborne, or undergone, or promised to be done, forborne or undergone, by another person or group.

Convention The formal name given to certain written agreements concluded between states. A more general term is treaty, but other expressions such as covenant, compact,

accord, pact, and charter are, from time to time, also used. Conventions are legally binding on states that ratify them.

Covenant This is a treaty that is said to be of exceptional moral importance, one whose obligations are seen or assumed to be sacred.

Declaration A formal statement of agreement between or among states. Because declarations do not generally require ratification and, to that extent, do not correspond to treaties in the formal sense, commentators and some states have argued that they do not have obligatory force. Such is not always the case, however, because declarations often contain statements of existing international law. And, in some instances such as the Universal Declaration of Human Rights, they sometimes acquire obligatory force of their own.

Denunciation Sometimes used interchangeably with renunciation, denunciation refers to any act of declaring invalid, terminating, withdrawing from, or suspending the operation of a treaty. Such an act usually takes place in accordance with the terms of the treaty.

Entry into Force The date on which treaties or other international agreements begin to have legal effect. Usually a treaty enters into force in a manner and on a date stipulated in the terms of that treaty, and it takes legal effect on the states that have accepted (through ratification) its obligations.

Geneva Protocols The term refers to two 1977 revisions and supplements to the Geneva Conventions of August 12, 1949. Protocol I broadens the scope of protections afforded victims of *international* armed conflicts. And Protocol II provides protection for victims of non-international conflicts such as civil wars, which are not mentioned in the 1949 conventions.

Global South This is a term which has come to denote a number of countries that are less advanced technologically and economically than others such as Japan, Australia, New Zealand, Canada, and the United States, and those, in general, of western Europe. Since most of the "less advanced" countries are from Africa, Asia, and South America, they are sometimes called the Global South.

Human Rights Instruments This is a term that refers to any as well as all formal legal documents that together embody the ideals, principles, and norms of human rights.

Intergovernmental Organizations The name given to those organizations that operate across two or more states and whose members are themselves states. These organizations include the United Nations, the Organization of American States, the Organization of African Unity, the Arab League, the Association of Southeast Asian Nations, and the Council of Europe.

Kafalah This is a term which defines a practice, in Islamic countries, of caring for orphans or abandoned children.

Nation-State This term has a refined meaning which seeks to capture a particular type of state--one whose physical boundaries are co-extensive with a cultural community. In this book, however, its conventional use is followed. That conventional usage, which employs nation, state, and nation-state interchangeably, sees the nation-state as any political collectivity that has sovereign independence.

Ordre Public. A term out of French political and legal culture which refers to the authority of a state to carry out or to ensure the preservation of various public functions such as public safety, public health, public morals, and public order, including national security. To make sure that authority is preserved, certain limitations may, from time to time, be placed on the exercise of some human rights.

Party Any state that accepts the obligations of an international agreement or other transaction. Sometimes, references are made to "State Party" or to "States Parties" to a treaty.

Protocol A treaty that revises or adds to the terms of an earlier treaty. An optional protocol gives countries the choice of whether or not they wish to be bound by its additional terms.

Ratification An international term that denotes the act by which a state consents to be bound by the terms of a treaty. Each state usually has its own formal act by which that consent is indicated. In the U.S., for example, ratification often requires action by the Senate.

Reservation This term refers to changes or amendments inserted into a treaty by one or more of the parties to that treaty as an implied or explicit condition of ratification. Usually such changes are designed to have a limiting effect, but they cannot be enforced unless they are accepted by other countries that are parties to the treaty.

Resolution Resolution is an international term for the formal expression of a consensus by an intergovernmental organization. As in the case of declarations and recommendations, resolutions do not require ratification, and they create binding international obligations only when they are, by states, *accepted in practice* or treaties.

Signatory In general the term refers to a state that has signed an international agreement. Signing, in the cases of agreements that require ratification or other forms of acceptance, only indicates that the agreement has been authenticated and will be referred to the governments of the signing states. If the agreement does not need ratification or other forms of acceptance, then the act of signing (becoming a signatory) is the equivalent of consenting to be bound by the terms of the agreement. In many instances, signatories to an agreement that must be ratified promise not to engage in any course of conduct,

during the period between signing and ratification, which might defeat the aims and purposes of the agreement.

Treaty A generic term for written international agreements, whether such agreements are called charters, compacts, concordats, covenants, conventions, pacts, or protocols.

Working Group This is a term used to denote one of the functional bodies into which the UN Commission on Human Rights is subdivided. These groups are usually assigned specific tasks, varying from reviewing developments in certain areas of human rights such as child labor and slavery-like practices to examining, revising, or simplifying existing human rights instruments, and even the drafting of proposed human rights instruments.

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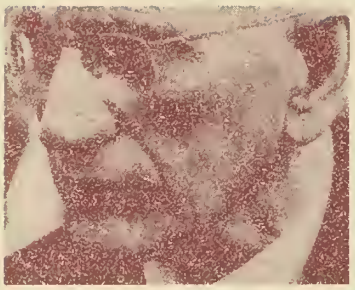

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